

Application No.: 10/776,576  
Final Office Action dated October 15, 2008  
Amendment and Response dated December 30, 2008  
Docket No.: 760-102 DIV  
Page 7

**Remarks/Arguments:**

**Introduction**

Claims 1-20 are pending.

**Section 112 Rejections**

Claims 4 and 6-12 were rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description, and second paragraph, as allegedly being indefinite. Applicants respectfully submit that with the claim amendments presented herewith the Section 112 concern are obviated. Paragraph 0018, in particular the last sentence of paragraph 0018, describes the limitations of claim 4.

Reconsideration and withdrawal of the Section 112 rejections are respectfully requested.

**Double Patenting Rejections**

Claims 1, 14 and 18 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claim 2 of copending Application No. 11/206,657. Upon indication of allowable subject matter Applicants are willing, if appropriate, to file a terminal disclaimer.

**Section 102 Rejections**

Claims 1-20 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent No. 4,877,661 to House et al. (hereinafter "House"). Applicants respectfully traverse.

House discloses a uniaxially expanded ePTFE structure having parallel and straight fibrils. (House, column 3, lines 10-12). The examiner then asserts that the possible biaxial



stretching, as taught by House, is somehow the required “radially expanding and longitudinal foreshortening” step of the present invention. While the Applicant agrees with the examiner that biaxial stretching of tubular ePTFE does involve radial expansion. Such biaxial stretching, however, by the very nature of the term would also necessarily have longitudinal stretching. Such longitudinal stretching is in direct contrast to the present invention.

For alleged support of “radially expanding and longitudinal foreshortening”, the examiner very selectively and incorrectly reads House. For example, House specifically states that is longitudinally stretched ePTFE tubes are specifically compressed in an opposite longitudinal direction, as follows:

**FIG. 1 is a schematic plan view of a section of a uniaxially expanded PTFE material produced using the techniques disclosed in the U.S. Pat No. 3,953,566 patent. This section as seen under a microscope is depicted as possessing many nodes 2 interconnected by many fibrils 4. This shows the microstructure in which the longitudinal axes of the fibrils are all substantially parallel to the direction of expansion. This precursor material is compressed in the direction parallel to but opposite to the direction in which it was originally expanded by stretching. (House, column 3, lines 16-27)**

Clearly, the support of the “radially expanding and longitudinal foreshortening” limitation is not disclosed thereat in House.

The examiner points to the compression step of House for alleged teaching of longitudinal foreshortening. House does disclose longitudinally compressing its ePTFE tube, as follows:

**All tubes had a 10 mm inside diameter. ... In accordance with the invention, tubes were fitted over stainless steel mandrels of 10 mm outside diameter. One end of each tube was secured to its mandrel with a restraining wire. The free end of each tube sample was pushed by hand longitudinally**



**toward the restrained end of the tube, thus compressing the tube sample longitudinally.** (House, column 6, lines 41-53)

In this step of House, however, there is clearly no radial expansions as the ePTFE tube is placed over the mandrel as the diameters of the ePTFE tube and the mandrel are identical.. Nevertheless, the examiner asserts that such foreshortening would necessarily cause radial expansion. This is in direct contrast to the specific disclosure and teaching of House. House restrains one end of the ePTFE tube and then pushes the free end of the ePTFE tube toward the free end of the ePTFE tube. House fails to disclose any radial expansion of the ePTFE tube during this step. The Examiner appears to assert the House is stating that its mandrel is longitudinally compressed. House, however, clearly does not disclose the assertion by the examiner.

The Examiner is clearly reading more into the cited reference than is actually disclosed. As House is silent as to, *inter alia*, “radially expanding and longitudinal foreshortening” a longitudinally stretched ePTFE tube, the Examiner must then properly apply an inherency argument to the missing descriptive matter of House. To establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. *Crown Oper. Int’l Inc. v. Solutia Inc.*, 289 F.3d 1367, 62 U.S.P.Q.2d 1917 (Fed. Cir. 2002). Further, inherency may not be established by probabilities or possibilities, and the mere fact that a certain thing may result from a given set of circumstances is not sufficient for a *prima facie* case of anticipation. *Scaltech Inc. v. Retec/Tetra L.L.C.*, 153 F.3d 1193, 51 U.S.P.Q.2d 1055 (Fed. Cir. 1999). Occasional results are not inherent. *Mehl/Biophile Int’l Corp. v. Milgraum*, 192 F.3d 1365, 52 U.S.P.Q.2d 1303, 1306 (Fed. Cir. 1999).

Clearly, the assertion by the examiner does not meet the standard for establishing a *prima facie* case of anticipation.



Application No.: 10/776,576  
Final Office Action dated October 15, 2008  
Amendment and Response dated December 30, 2008  
Docket No.: 760-102 DIV  
Page 10

Furthermore, the Examiner asserts that House's longitudinal compression must include radial expansion to avoid wrinkles in the ePTFE tube. For alleged support of such an assertion, the Examiner points the Applicant to column 3, lines 24-29 of House. Nevertheless, House in the same paragraph states that House's longitudinal compression may result in wrinkles. (House, column 3, lines 34-36). Clearly, the "wrinkle" argument by the examiner is strong and does not meet the legal threshold for reading the missing elements of House based on inherency principals.

Therefore, House fails to disclose the present invention as defined by independent claims 1, 16 and 18. Reconsideration and withdrawal of the Section 102 rejections over House are respectfully requested.

**REMARKS:**

Therefore, Applicants respectfully submit that independent claims 1, 16 and 18, and all claims dependent therefrom, are patentably distinct. This application is believed to be in condition for allowance. Favorable action thereon is therefore respectfully solicited.

Should the Examiner have any questions or comments concerning the above, the Examiner is respectfully invited to contact the undersigned attorney at the telephone number given below.

Respectfully submitted,

/John S. SOPKO, Reg.# 41321/  
John S. Sopko  
Registration No.: 41,321  
Attorney for Applicants

HOFFMANN & BARON, LLP  
6900 Jericho Turnpike  
Syosset, New York 11791  
(973) 331-1700